

## **REMARKS**

Applicants submit that the finality of the Office Action and the rejection of claims 7-8, 10 and 14-15 as being provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 5-6, 9 and 11-12 of copending application No. 09/797,720, is improper, and that the Examiner has failed to properly act in accordance with the procedures set forth in MPEP §822.01 under the heading "ONLY PROVISIONAL DOUBLE PATENTING REJECTIONS REMAINING IN BOTH APPLCIATIONS". Applicants note that copending application No. 09/797,720 is the parent application of the present application and the only rejection therein, as is the case with the present application, is a provisional judicially created doctrine of obviousness-type double patenting rejection with respect to claims of the continuing application, i.e. the present application. As provided for in the aforementioned section of the MPEP:

If the "provisional" double patenting rejections in both applications are the only rejections remaining those applications, the Examiner should then withdraw that rejection in one of the applications and permit the application to issue as a patent. The Examiner should maintain the double patenting in the other application as a "provisional" double patenting rejection which will be converted into a double patenting rejection when the one application issued as a patent.

It is apparent that the Examiner has not followed the aforementioned procedures.

In an attempt to follow the procedures in accordance with the section of the MPEP, applicants are filing a response in the copending parent application requesting issuance of such application without a Terminal Disclaimer. Accordingly, as to the rejection of the claims 7-8, 10 and 14-15 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 5-6, 9 and 11-12 of copending application No. 09/797,720 and in accordance with MPEP §822.01, as recognized by the Examiner, such rejection can be overcome by the filing of a Terminal Disclaimer. In order to expedite the prosecution of this

application without acquiescing in the propriety of the rejection as set forth by the Examiner, applicants submit herewith a Terminal Disclaimer and the appropriate fee therefor, such that this rejection should now be overcome.

In light of the assumed issuance of the parent application without the requirement for a Terminal Disclaimer therein, applicants have submitted a Terminal Disclaimer in connection with this continuing application in relation to the parent application, in accordance with the procedures of MPEP §822.01, such that in this manner, the issuance of this continuing application and the parent application can be expedited.

For the foregoing reasons, favorable action and issuance of the present application is requested.

To the extent necessary, applicant's petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (500.39756CX1) and please credit any excess fees to such deposit account.

Respectfully submitted,



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